

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7228 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos 1 to 5 No

DEVAYATBHAI NARANBHAI AHIR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR.JC GOHIL ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/02/99

ORAL JUDGEMENT

Prayer of the petitioner in this writ petition under Article 226 of the Constitution of India is to quash the detention order dated 23.6.1998 passed by the District Magistrate, Amreli declaring petitioner as dangerous person within the meaning of section 2(c) of the Prevention of Antisocial Activities Act (for short

'PASA') and for immediate release of the petitioner from illegal detention.

Brief facts giving rise to this writ petition are that five cases under various sections of the IPC were registered against the petitioner and all these cases are pending against him. These cases were considered by the Detaining Authority. He also considered the statements of ten confidential witnesses and upon considering the aforesaid material the Detaining Authority was subjectively satisfied that the petitioner is dangerous person within the meaning of section 2(c) of the PASA. Accordingly, the impugned order of detention was passed. It is this order which is under challenge in this writ petition.

The main contention of the learned Counsel for the petitioner has been that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order.

From five registered criminal cases under various sections of the IPC between 1995 to 1998, it can be said that the petitioner is habitual in committing offences punishable under sections 16 and 17 of the IPC. Same indication is to be found from the statements of the ten confidential witnesses whose extracts have been given in the grounds of detention. Various sections of the IPC have been quoted. At the end of the statement of the each witness the section under which the petitioner committed offence is quoted. Thus, the subjective satisfaction of the Detaining Authority, that the petitioner is dangerous person does not require any interference as it is based upon proper appreciation of material on record.

However, before passing the order of detention against the petitioner under PASA, the provisions of section 3(4) and explanation appended thereto under the PASA should have been considered by the Detaining Authority. Unless the activities of a dangerous person are found to be prejudicial for maintenance of public order he could not be preventively detained.

From the grounds of detention, it appears that the petitioner is hardened criminal and is in the habit of repeatedly committing various offences for which as many as five cases were registered and ten unregistered. Incidents were also narrated by ten confidential witnesses. However, activities of dangerous person or hardened criminal per se cannot be said to be amounting

to prejudicial for maintenance of public order.

So far as the registered criminal cases are concerned they were incidents between individuals pertaining to law and order for which cases were registered against the petitioner and he was dealt with. There is no indication in the grounds of detention that the offences committed in these five cases were of such nature where public peace and tranquillity in the area was disturbed and even tempo of the life of the locality or community was disturbed. Thus, these cases cannot be pressed in service for coming to subjective satisfaction that the activities of the petitioner in these five cases were prejudicial for maintenance of public order.

So far as the statements of the ten confidential witnesses are concerned, it is unnecessary to burden this judgment by reproducing those extracts and statements. Suffice it to say that after going through these statements it can be said that in none of these incidents public order was disturbed. These were only individual incidents with the petitioner and the witnesses on those ten occasions. By no stretch of imagination any incident narrated by any of these ten witnesses can be said to have disturbed the public order. At the most, it may give indication that the petitioner was habitual in committing such offence and repetition of such criminal and antisocial activities of the petitioner could be pressed in service only for declaring him dangerous person but not for passing detention order.

In my opinion the activities of the petitioner were not prejudicial for maintenance of public order. Hence, order for his preventive detention is illegal. The petition therefore, succeeds and is hereby allowed. The impugned order of detention dated 23.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt